

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.242/Nag./2025
(Assessment Year : 2018-19)

Nirmalkumar Agrawal (HUF)
Shiv Sadan, Main Road Appellant
Tumsar 441 912 PAN – AADHN0157N

v/s

Income Tax Officer
Ward-2, Bhandara Respondent

Assessee by : Shri Rohan Loya a/w
Shri Rajesh Loya
Revenue by : Shri Pankaj Kumar

Date of Hearing – 23/06/2025

Date of Order – 22/09/2025

ORDER

PER K.M. ROY, A.M.

The captioned appeal is filed by the assessee against the impugned order dated 26/03/2025, passed u/s 263 of the Income Tax Act, 1961 (for short "*the Act*") by the learned Principal Commissioner of Income Tax, Nagpur-2 [*the learned PCIT*] for the assessment year 2018-19.

2. The assessee has raised the following grounds:-

"(1) That the notice issued u/s 263 and the order of the Learned Pr. Commissioner of Income Tax, PCIT, Nagpur-2 passed u/s. 263 are bad in law and wrong on facts. On the facts and circumstances of the case,

the learned PCIT erred in holding that assessment order passed by the AO u/s. 147 r.w.s. 144B of the IT Act, 1961 is erroneous and prejudicial to the interest of the revenue and therefore the action of the Pr. CIT, Nagpur-2 is illegal and liable to be quashed.

(2) That the learned Pr. CIT erred in law and on facts in setting aside the order of the AO passed u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 with a direction to conduct enquiry and passed a fresh assessment order denovo. On the facts and circumstances of the case, the Pr. CIT erred in disregarding the facts available on assessment record that sufficient enquiry was conducted by AO by obtaining various documents which have been verified and on such basis income is assessed.

(3) That the learned AO passed the assessment order u/s.147 r.w.s.144B after conducting full enquiries and verification of record and after satisfying has passed the assessment order. On the facts available on record the learned Pr. CIT erred in holding that AO did not make enquiries and verification required in respect of financial transaction mentioned in the order u/s.263.

(4) That the learned Pr. CIT erred in law and on facts in assuming jurisdiction u/s 263 on the basis of reappraisal of evidence and holding the assessment order passed u/s 147 r.w.s. 144B of the IT Act as erroneous and prejudicial to the interest of revenue. On the facts and circumstances of the case, once the AO has taken a view while framing assessment order, revisionary powers cannot be exercised for adopting another view.

(5) That the learned Pr. CIT erred in law and on facts in not making enquiry on the submissions made before her and passing order u/s.263. On the facts and circumstances of the case, the order passed u/s.263 is therefore not in accordance with law.

(6) That for any other ground with kind permission of your honour at the time of hearing of appeal.”

3. Facts in Brief:- For the year under consideration, the assessee filed his return of income under section 139(1) of the Act on 25.08.2018 disclosing total income of ₹ ₹ 2,60,860, which includes income from capital gain and income from other sources. The Finance Intelligence Unit (FIU) had credible information which indicated that Navdurga Advisory Private Limited (NAPL) was a shell company and consequent

transactions with this company were suspicious or sham entries. It was also conveyed that high value transactions were undertaken by the assessee with NAPL as it had transferred ₹ 40,00,000, to the assessee during the assessment year under consideration. On considering the reply of the assessee pursuant to the notice issued under section 148(b) of the Act, proceedings under section 148 were initiated vide order dated 31/03/2022. Thereafter, assessment order under section 147 r/w section 144B of the Act was passed on 24/03/2023, assessing total income at ₹ 4,28,820, stating that this was the returned income and income computed under section 143(1)(a) of the Act. This fact is incorrect, as the income returned was ₹ 2,60,860, and the same income was computed under section 143(1)(a) of the Act. The Assessing Officer, however, treated the return of income filed at ₹ 4,28,820, and the income computed by the Assessing Officer remained the same i.e. ₹ 4,28,820. In effect, no addition was perpetrated raising nil demand.

2. Meanwhile, the learned PCIT, in exercise of power of assuming jurisdiction conferred upon him under section 263 of the Act, was of the view that the assessment order passed by the Assessing Officer is erroneous inasmuch as it is prejudicial to the interests of Revenue for the following reasons, as per show cause notice issued on 26/02/2025:–

"a. Assessment was reopened by issue of notice u/s 148 of the Act dated 31.03.2022 as information was available that income has escaped assessment. In response, Return u/s 148 was filed on 30.04.2022 declaring Total Income at Rs. 2,60,860/-. Assessment was completed on

24.03.2023 by NaFAC assessing Total Income at Rs. 4,28,820/- stating that this was the Returned Income and Income computed u/s 143(1)(a) which is incorrect, as income returned was Rs. 2,60,860/- and the same income was computed u/s 143(1)(a) of the Act. The assessment order thus erroneously took the returned and assessed income at the Total Income of the assessee at Rs. 4,28,820/-.

b. In the show cause notice issued on 14.03.2023 the Assessing Officer stated that the assessee failed to establish the creditworthiness of the company Navdurga Advisory Private Limited (NAPL) and accordingly the amount of Rs. 40 lakhs received in F.Y. 2017-18 by it was proposed to be added u/s 68 of the Act. However, on the assessee's response that the loan was Rs. 20 lakh lakhs without any inquiry or verification the AO concluded that the transaction was of only Rs. 20 lakhs adding that the investigation wing due to oversight while preparing report, included the amount of Rs. 20 lakhs given to Vijay Kumar Goyal in the name of the assessee. In addition, the AO relied on the Order u/s 148A(d) of the Act in the case of Chaitanya Bahuuddeshiya Sanstha for A.Y. 2018-19 passed by DCIT Circle (Exemption), Nagpur withdrawing the proceedings initiated u/s 148A(d) of the Act and completed the assessment relying on the same without examining and verifying whether the facts and circumstances of that case were the same as in the case of the assessee."

4. The learned PCIT while relying upon certain judicial pronouncements directed the Assessing Officer to pass a fresh assessment order after giving opportunity of being heard to the assessee and conducting necessary inquiries and verification of the same. Para-5 of the impugned order is reproduced below:-

"5. The A.O. did not make inquiries and verification required in respect of the financial transactions as discussed above and without inquiry into and verifying the same with the different entities which was required in view of the responses during the proceedings and in erroneously relying on order of another AO, the AO failed to correctly assess and compute the income of the assessee as per provisions of the Act. Thus, the order passed u/s 147 read with section 144B of the Act dated 24.03.2023 for A.Y. 2018-19 is erroneous in so far as it is prejudicial to the interests of revenue within the meaning of Explanation 2(a) and 2(b) of section 263 of the Act and is required to be revised u/s 263 of the Act. Accordingly, in exercise of powers vested in me u/s 263 of the Act the above said reassessment order dated 24.03.2023 passed by AO u/s 147 read with

section 144B of the Act for A.Y. 2018-19 in the case of the assessee is set aside, with a direction to the Assessing Officer to pass a fresh Assessment Order denovo, after giving opportunity of being heard to the assessee and conducting necessary inquiries and verification of the same."

The assessee being aggrieved by this open remand order, is in appeal before the Tribunal.

5. Shri Rohan Loya, learned Authorised Representative (for short "the A.R.") appearing for the assessee, while opening his arguments vociferously submitted that the impugned order passed under section 263 of the Act is unsustainable and should be quashed in view of the fact that the detailed inquiries were made by the Assessing Officer in an infallible manner. The learned A.R. furnished a detailed Paper Book containing following documents:-

- *Notice u/s 142(1) dt. 29-10-2022;*
- *Submission dt. 11-11-2022;*
- *Issue Letter dt. 05-11-2022;*
- *Issue Letter dt. 06-01-2023;*
- *Notice u/s 142(1) dt. 21-02-2023;*
- *Submission dt. 24-02-2023;*
- *Show Cause Notice dt. 14-03-2023;*
- *Submission dt. 17-03-2023;*
- *Notice u/s 133(6) dt. 02-03-2023 and Response;*
- *Notice u/s 133(6) dt. 14-03-2023 and Response;*
- *Notice u/s 263 dt. 26-02-2025;*
- *Submission dt. 05-03-2025 in response to notice u/s 263;*
- *Notice u/s 263 dt. 06-03-2025;*
- *Submission dt. 07-03-2025 in response to notice u/s 263;*
- *Ledger of NAPL for the period 01-04-2010 to 31-03-2020;*
- *Financial Statements of NAPL for F.Y. 2017-18."*

6. The learned A.R. also furnished a synopsis which is reproduced below for the sake of clarity:-

"(1) Assessee has obtained loan of Rs. 20,00,000/- from M/s. Navdurga Advisory Pvt. Ltd. (NAPL) which was repaid to NAPL in F.Y. 2018-19 and F.Y. 2019-20. The transaction of loan acceptance and repayment have been carried out by banking channel. The assessee submitted various documents such as bank statements, account confirmations, ledger accounts of multiple years, financial statements of NAPL etc. to establish the genuineness, identity and creditworthiness of the transaction.

(2) The assessment order u/s.147 read with section 144B is passed after making inquiry on the issue and after having examined the replies of the assessee as well as replies of NAPL in response to notices issued u/s 133(6) with due application of mind accepted the identity, genuineness and creditworthiness. It is not the case where no inquiry was made. Proper notice for inquiring about the transaction was issued by the AO and detailed submission along with evidence were furnished.

(Refer PB Page No. 1 to 39)

(3) The Ld. PCIT has raised certain issues in the order u/s 263 and concluded that AO did not make inquiries in respect of the financial transaction. Such issues along with rebuttal is as below:

Sr. no.	Issue raised by Ld. PCIT (Reference to Order u/s 263)	Inquiry by A.O. (Reference to notices issued by A.O. during the course of proceedings)	Rebuttal by assessee (Reference to assessment order u/s 147 r/w section 144B)
1.	<p>Pg.4, Para-3.2</p> <ul style="list-style-type: none"> The loan was stated by the assessee to be given without interest while the profit motive. 	<p><u>Notice u/s 142(1) dt 21/02/2023</u></p> <p>(Refer Paper Book Page no.12)</p> <ul style="list-style-type: none"> You are requested to explain whether any interest has paid to M/s. NAPL. 	<p>Pg.5, Para-1</p> <ul style="list-style-type: none"> We have to submit that no interest has been paid to M/s. Navdurga Advisory Pvt. Ltd. <p><u>Pg.7, Para-6</u></p> <ul style="list-style-type: none"> Due to close association of assessee with the Directors of NAPL in view of the reasons mentioned in Para-5 above the assessee was aware of the surplus funds available with NAPL. The assessee, therefore, obtained funds under mutual trust. The loan has been repaid also.

2.	<p><u>Pg.4, Para-3.2</u></p> <ul style="list-style-type: none"> No inquiry and verification was done by the .AO. in respect of the loan taken and its utilization including the income derived from capital gain and unsecured loan advanced. 	<p><u>Notice u/s 142(1) dt. 21/02/2023 - Point-6</u></p> <p>(Refer Paper Book Page-no.12)</p> <ul style="list-style-type: none"> 6. Please furnish narration to all debit & credit entries above ₹ 50,000, appeared in your all bank accounts. 	<p>Pg. 6, Para-7</p> <ul style="list-style-type: none"> The details along with narrations of debits and credits in the Federal Bank Account is enclosed.
3.	<p><u>Pg.5, Para-3.2</u></p> <ul style="list-style-type: none"> As stated by the assessee during assessment proceedings that there was no written documentation regarding the taking / fiving of this amount, as such this required deeper scrutiny by the A.O. 	<p><u>Notice u/s 142(1) dt. 29/10/2022 - Point 2.</u></p> <ul style="list-style-type: none"> Please furnish agreement / contract depicting terms and conditions of loan taken from NAPL. 	<p><u>Pg.4, Para-3</u></p> <ul style="list-style-type: none"> There is no written agreement / contract for loan taken from Navdurga Advisory Pvt. Ltd. The funds are taken as per the need and terms of repayment were fixed orally.
4.	<p><u>Pg.5, Para-3.2</u></p> <ul style="list-style-type: none"> The A.O. had sought information from NAPL on the transactions in the 133(6) notice issued to it. However, no response on this query was furnished by NAPL to the A.O. 		<p><u>Pg.21, Last 5 lines. Para-3.2</u></p> <ul style="list-style-type: none"> Meanwhile, during the course of assessment proceedings to verify the identity, creditworthiness and genuineness of transaction made by the assessee, notice u/s. 133(6) was issued to the NAPL on 14/03/2023 from whom assessee has taken loan and in compliance thereto, a detailed reply was received from the company on 17/03/2023, the same is reproduced as under:
5.	<p><u>Pg.5, Para-3.2.1</u></p> <ul style="list-style-type: none"> The A.O. thus failed to verify with the entity from where the information was 		<p><u>Pg.12, Last Para</u></p> <p><u>Reasons for inference drawn that no variation is required on this issue</u></p> <ul style="list-style-type: none"> Bank statement of

	<p>received in respect of ₹ 40,00,000 whether or not the amount of loan was ₹ 40,00,000, or ₹ 20,00,000, and also failed to share his view in respect of the conclusion drawn by him erroneously without any basis.</p>		<p>assessee is reproduced</p> <ul style="list-style-type: none"> • Bank statement of lender is reproduced • Reply of NAPL to notice u/s 133(6) reproduced. <p><u>Pg.20, Para above bank extract</u></p> <ul style="list-style-type: none"> • Hence, to verify the contention of the assessee HUF, I have thoroughly examined the bank account (over draft) No.50200008135124 of M/s. Navdurga Advisory Pvt. Ltd. (NAPL) maintained with HDFC Bank, Shankar Nagar, Nagpur and found as under:
6.	<p><u>Pg.6, Para-3.3</u></p> <ul style="list-style-type: none"> • Thus the assessee's contention that the facts of both cases are same and that the A.O. of the HUF has stated in the assessment order that facts are similar is incorrect for the above reasons. 	<ul style="list-style-type: none"> • Order u/s. 143(3) already passed and no adverse inference drawn. 	

Therefore, such a case cannot be treated as a case of "no inquiry" and thus proceedings u/s 263 of the Act cannot be initiated. Further, an assessment order should not be subject to revision u/s 263 merely because another view is possible on the issue decided by the AO.

We rely on following judgements including that of the Hon'ble Apex Court:

Supreme Court in the case of Greenworld Corporation [2009] 181 Taxman 111 (SC)

Delhi High Court in the case of CIT v. Vodafone Essar South Ltd. taxmann.com 273 (Delhi) [2012] 28

Delhi High Court in the case of CIT v. Anil Kumar Sharma - [2010] 194 Taxman 504 (Delhi)

(4) Lack of enquiry/no enquiry is different from inadequate enquiry and it is only in case of no enquiry by the AO, Pr. CIT/CIT can exercise jurisdiction u/s 263 of the Act and not in case where the AO has made enquiries as seems appropriate in the facts and circumstances of the case. Similar proposition was upheld in the following rulings:

Bombay High Court in the case of CIT v. Nirav Modi [2016] 71 taxmann.com 272 (Bombay) [SLP dismissed by SC]

Delhi Tribunal in the case of Braham Dev Gupta v. PCIT-[2017] 88 taxmann.com 831

[2019] 106 (5) If detailed inquires made by AO, revision u/s 263 is not sustainable Supreme Court in the case of PCIT vs. Shree Gayatri Associates taxmann.com 31 (SC)

(6) It has been informed that the department has credible information and material to indicate that NAPL is a shell company. But such credible information and material is never confronted to assessee. It has also been informed that law enforcement agency has identified NAPL as a Shell Company. But the details as to which law enforcement agency identified so and on what basis is not provided. The mere allegation is not suffice.

(7) It has been time and again informed at every stage of the proceedings i.e. during 148A, during 147 and during 263 that the actual loan amount taken from NAPL is Rs. 20 Lakhs and not Rs. 40 Lakhs.

In Pg. 5, Para 3.2.1 of the Order u/s 263, the Ld. PCIT has categorically alleged that the 'AO has failed to verify with the entity from where the information was received in respect of Rs. 40,00,000/- whether or not the amount of loan was Rs. 40,00,000/- or Rs. 20,00,000/- and also failed to share his view in respect of the conclusion drawn by him erroneously without any basis. This verification was essential for any conclusion to be drawn by the AO.'

In this regard, even the Ld. PCIT has not made any enquiry to verify this fact put forth during the course of proceedings u/s 263 and therefore, has also failed to bring on record any evidence in support of the allegation that loan amount is Rs. 40 Lakhs."

7. The learned A.R. demonstrated that inquiries have been conducted before passing the order and the allegations in show cause notice regarding reliance on order under section 148A(d) of another assessee is vague, nebulous and fragile.

8. On the other hand, the learned Departmental Representative submitted that the creditworthiness of the company is doubtful and hence there is a miserable lack of enquiry on the part of the Assessing Officer and accordingly revisionary proceedings has been rightly initiated by the learned PCIT since the creditworthiness of the lender was not examined. Hence, he strongly averted that the revisionary proceedings be sustained as there is an object failure on the part of the Assessing Officer to conduct inquiry.

9. We have carefully analyzed the issue and find that the Assessing Officer, in unequivocal terms have thoroughly elaborated the investigation process in assessment order in the steps outlined below:–

"In compliance to showcause notice dated 14.03.2023, the assessee has filed written submission on 17.03.2023, the same has been perused and found that the assessee has categorically stated that it has received an amount of total Rs. 20,00,000/- and not Rs.40,00,000/- from Navdurgra Advisory Pvt LTD(NAPL) during the year under consideration. Hence, to verify the contention of the assessee HUF, I have thoroughly examined the bank account (Over draft) No. 50200008135124 of M/s. Navdurgra Advisory Pvt. LTD. (NAPL) maintained with HDFC Bank, Shankar Nagar, Nagpur and found as under:

06/04/17 CHO PAID-MICR CTS-MU-NIRMAL KUMAR 000000000000100
06/04/17 6,630,567.87

060417 CHO PAID-MICR CTS-MU-VUAY KUMAR AGRAWAL 000000000000107
06/04/17 4,630,567.87

The above entries of bank account clearly indicate that the assessee Nirmal Kumar Agarwal HUF has taken loan of Rs.20,00,000/- from NAPL on 06.04.2017. Further due to oversight while preparing report by the investigation wing, the amount of Rs.20,00,000/- given by NAPL to Vijay Kumar Goyal as mentioned above in bank account was included in the name of assessee. On further examination of the investigation report it is found that all the names of person who have taken loan from NAPL

and shown in the bank account are found except the name of Shri Vijay Kumar Agarwal. This proves that the assessee has taken loan of only Rs.20 lakhs from NAPL. Thus the contention of the assessee stands found correct.

Meanwhile, during the course of assessment proceedings to verify the identity, creditworthiness and genuineness of transaction made by the assessee, notice u/s.133(6) was issued to the M/s. Navdurgra Advisory Pvt LTD(NAPL) on 14.03.2023 from whom assessee has taken loan and in compliance there to, a detailed reply was received from the Company on 17.03.2023.

XXXXX XXXXX XXXXX

The above submission made by the lender company as well as reply filed by the assessee enclosing confirmation of NAPL mentioned above have been perused and found that the Company NAPL has active status under Companies Act and is registered at Nagpur and assessed to tax having PAN AACCN9619D. Thus, the identify of lender company stands proved.

Further genuineness of transaction can be verified by confirmation of the parties along the details of mode of transaction. Further, during the course of assessment proceedings, in compliance to notice issued u/s.133(6) on 02.03.2023 confirmation and details of mode of transaction have been filed by the lender company. Thus, the transaction on the basis of documents filed is found genuine one.

Finally, to verify the creditworthiness of the transaction, showcase notice was issued on 14.03.2023 to the assessee. The capacity to advance loan can be established by showing sufficient income, capital and reserve or other fund in the hands of creditor. I have carefully gone through the reply filed by the assessee as well as lender company enclosing the Audited Financial Statement of NAPL for the year under consideration. In which net worth of the company i.e. own capital of the company is Rs.14,30,98,088/-. This net worth is represented by the Fixed Deposits and bank balance in the bank of Rs.9,04,93,719/- and the advances outstanding. Further in the accounts of the lender capital including share capital and reserves mentioned in the audited accounts of Rs.14,30,98,088/-. Thus, on the basis of reply filed along with documentary evidences, the creditworthiness of the transaction stands established.

Keeping in view the details facts discussed above and the assessee has furnished detailed submission explaining with requisite documents / details which substantiate that the loan of Rs. 20 lakhs was taken from M/s Navdurgra Advisory Pvt LTD (NAPL) is genuine transaction which is the reason for selection of this case for reopening. Therefore, no adverse reference is drawn in this case and income is assessed to return income."

10. We do not find any wrong conclusion has been drawn by the Assessing Officer. At this juncture, we place reliance on the recent judgment dated 04/04/2025, passed by the Hon'ble Supreme Court in PCIT-1 v/s V-Con Integrated Solutions Pvt. Ltd., SLP (Civil) Diary no.13205 of 2025, wherein the Assessing Officer had passed the order after making an elaborate enquiry and has considered the fact from financial statements. There is a distinction between the failure or absence of investigation and a wrong decision / conclusion. A wrong decision / conclusion can be corrected by the Commissioner of Income Tax with a decision on merits and by making an addition of disallowance. In this case, the learned PCIT has held that there is a confusion as to the exact quantum of loan i.e., whether ₹ 40 lakh or ₹ 20 lakh. The Assessing Officer has verified the fact from bank statement, financial statements and other record. The learned PCIT has not conducted any minimal enquiry to dislodge the cogent finding of the Assessing Officer which is impregnable. The Assessing Officer has conducted a detailed and thorough enquiry, examined the financial statements made speaking observation in the order and has taken one of the legally permissible views. In that case, revisional power cannot be exercised just on the ground that inadequate enquiry has been conducted. There may be cases where the Assessing Officer undertakes a superficial and random investigation that may justify a remote, albeit the Commissioner

must record the object failure and lapse on the part of the Assessing Officer to establish both the error and prejudice caused to the Revenue. The provisions does not authorize or give unfettered powers to the Commissioner to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made and for this proposition, we rely on the decision of the Co-ordinate Bench of the Tribunal in Narayan Tatu Rane v/s ITO, [2016] 70 taxmann.com 227 (Mum.). Thus, the order under section 263 of the Act fails to pass the muster of judicial propriety and hence being unsustainable is quashed.

11. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 22/09/2025

Sd/-
N.K. CHOUDHRY
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 22/09/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur